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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/499,871	02/07/2000	John Ellis	081862.P160	1846
7590 02/16/2007 Blakely Sokoloff Taylor & Zafman LLP 12400 Wilshire Boulevard 7th floor Los Angeles, CA 90025			EXAMINER JUNG, MIN	
			ART UNIT 2616	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			02/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/499,871	<b>Applicant(s)</b> ELLIS ET AL.	
	<b>Examiner</b> Min Jung	<b>Art Unit</b> 2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed November 29, 2006, with respect to the rejection(s) of claim(s) 1-50 under U.S.C. 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of different interpretation of claims and the reference.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 21-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Computer readable medium, as disclosed in the specification, includes a radio frequency link, which clearly is not a patentable subject matter.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 21-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 21-30 call for "a computer program product comprising: a computer usable medium ....., the computer program product having : computer readable program code for .....; and computer readable program code for .....". The specification fail to provide proper teaching for claims in this format. The specification at page 8, the bottom half, talks about the software implementation of the present invention in a very general term. It simply states that " When implemented in software, the elements of the present invention are essentially the code segments to perform the necessary tasks". In short, the support in the specification is inadequate for the computer program product claims 21-30.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

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Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1, 2, 6-8, 11, 12, 16-18, 21, 22, 26-28, 31, 32, 36-38, 41, 42, and 46-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Rochberger et al., US 6,272,107 (Rochberger).

Rochberger discloses method of path restoration in an ATM network utilizing point to point switched virtual circuits.

Regarding claims 1, 11, 21, 31, and 41, Rochberger teaches an apparatus, method, and a system for rerouting user connections between first and second nodes in a network switch, the apparatus comprising: a loop-back path to provide connectivity between the first and second nodes (loopback, col. 5, lines 27-39, and shown by dotted line 313 in Fig. 17), the first node having a primary connection (connection shown in Fig. 2) and a secondary connection (connection shown in Fig. 3), the primary connection carrying the user connections during a normal mode, the secondary connection not using network bandwidth during normal mode; and a switching element coupled to the loop-back path and the first node to connect the loop-back path to the primary connection during the normal mode and to the secondary connection when there is a failure condition at the primary connection. See, for example, col. 5, lines 27-39, col. 7, line 62 – col. 8, line 14, col. 13, lines 54-56, and col. 15, lines 58-65.

Regarding claims 2, 12, 22, 32, and 42, Rochberger shows the loop-back path being at least a physical connection (shown in Fig. 17).

Regarding claims 6, 16, 26, 36, and 46, Rochberger teaches that the secondary connection does not carry user connections during the normal mode (Rochberger teaches that "the redundant path is meant as a backup to the active path in the event of a node failure or link break" at col. 13, lines 55-56; also, it is taught that 'the data is rerouted over the redundant path' at col. 15, lines 61-62, and col. 16, lines 57-59).

Regarding claims 7, 17, 27, 37, and 47, Rochberger teaches that the network switch is an ATM switch (ATM network, col. 4, lines 49-55).

Regarding claims 8, 18, 28, 38, and 48, Rochberger teaches that the primary and secondary connections correspond to a virtual path connection (VPC) in the ATM switch (Rochberger's teaching is on path restoration in an ATM network, col. 1, lines 6-10).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-5, 9, 10, 13-15, 19, 20, 23-25, 29, 30, 33-35, 39, 40, 43-45, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rochberger.

Regarding claims 3, 13, 23, 33, and 43, Rochberger fails to specifically teach that the failure condition is detected by a network monitor. Rochberger, however, teaches

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the failure condition detection nonetheless (software detection at col. 5, lines 19-25, and hardware detection at col. 5, lines 26-39). To perform a detection function, it is imperative that some kind of network monitor is provided. Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to implement the detection function of Rochberger by employing a network monitor to detect the failure condition.

Regarding claims 4, 14, 24, 34, and 44, Rochberger teaches a re-route handler coupled to switching element to control the switching element based on a connectivity status between the first and second nodes, the connectivity status indicating the failure condition at the primary connection between the first and second nodes (the transit node #1 including the ports 316 and 318 detects the break in connection, col 16, lines 18-23).

Regarding claims 5, 15, 25, 35, and 45, Rochberger fails to specifically teach that the switching element switches the connectivity based on the connectivity status provided by the network monitor. Although Rochberger fails to show a network monitor as a physical device, Rochberger teaches the function of monitoring and detecting the connectivity status, and the switching is performed based on the connectivity status. See col. 16, lines 18-23, and Fig. 17. Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to specifically include a network monitor to provide the connectivity status for the connectivity switching operation.

Regarding claims 9, 19, 29, 39, and 49, Rochberger teaches OAM cell (col. 12, line 64) and a call release procedure (col. 5, lines 40-41).

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Regarding claims 10, 20, 30, and 40, Rochberger teaches that the primary and secondary connections have equal connection capacity (Equal connection capacity is assumed because Rochberger does not teach it to be otherwise. Further, Rochberger teaches that the same VPI/VC pair is used for both the primary path and the redundant path).

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Kim et al. patent, the Shiragaki patent, the Nakata patent, the Doverspike et al. patent, and the Yoshimura patent, are cited for further references.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Min Jung whose telephone number is 571-272-3127.

The examiner can normally be reached on Monday through Friday 9:00 - 5:00.

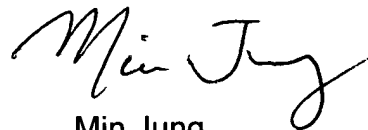
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJ  
February 14, 2007

  
Min Jung  
Primary Examiner